



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
D1W Jun-06

JEFFREY FURR
253 N. MAIN STREET
JOHNSTOWN OH 43031

COPY MAILED

JUN 21 2006

OFFICE OF PETITIONS

In re Application of	:	
Carlos Gabriel Bianchim	:	DECISION ON PETITION TO
Application No. 10/706,281	:	WITHDRAW HOLDING OF
Filed: 13 November, 2003	:	ABANDONMENT
Attny Docket No. 023853-00030	:	

This is a decision on the petition filed on 12 May, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on 29 April, 2005. Notice of Abandonment was mailed on 1 September, 2005.

Petitioner asserts that the Notice mailed on 29 April, 2005, was not received because it was mailed to the wrong address due to USPTO error. Specifically, petitioner 6 July, 2004, was not received. Specifically, petitioner asserts that a Power of Attorney and Change of Correspondence Address filed on 18 April, 2005, designated Customer Number 29569 as the correspondence address, but that, due to Office error, the Customer Number entered by the USPTO was No. 29560, and that the Office action was incorrectly mailed to that address.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received

Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the official file reveals that on 18 April, 2005, a Power of Attorney and Correspondence Address Indication Form was received which designated Customer No. 29569 as the correspondence address. However, the Office communication mailed on 29 April, 2005, as well as the Notice of Abandonment mailed on 1 September, 2005, were mailed to the address associated with Customer No. 29560, rather than the address, that associated with Customer No. 29569. As such, the showing of record is that there was an irregularity in the mailing of the Notices mailed on 29 April and 1 September, 2005, in that said Notices was not mailed to the proper address.

The Office apologizes for any inconvenience to petitioner.

Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

As petitioner has filed a response to the Notice mailed on 29 April, 2005, with the present petition, remailing of the Notice is unnecessary. Rather, the response filed with the petition is being treated as timely filed.

The application is being referred to Technology Center Art Unit 2821 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions